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THE JUDGMENT AND THE SUBSEQUENT PROCEDURE

9.1 Finding of a Violation

9.2 Referral to the Grand Chamber

9.3 Execution of Judgments

9.1 Finding of a Violation

As explained earlier,⁵²⁶ if the Chamber deems the application admissible, under the joint procedure it will immediately move on to the judgment stage. It will receive a draft judgment prepared under the instructions of the judge rapporteur, declaring the application admissible and concluding whether there has been a violation of any of the Articles of the Convention invoked by the applicant. A typical judgment concerning an Article 3 complaint will consist of the following components:

Name of the case and of the Section, application number, names of judges of the Chamber and name of the Section Registrar, date(s) of deliberations;

PROCEDURE: A summary of the proceedings, containing the name of the applicant and that of the respondent Contracting Party;

THE FACTS, consisting of

I. **THE CIRCUMSTANCES OF THE CASE:** other details of the applicant, together with the facts as submitted by the parties. If the facts are disputed between the parties they will be set out separately. Documents submitted by the parties, in so far as they are relevant, may also be summarised under this heading; and

II. **RELEVANT DOMESTIC LAW AND PRACTICE;**

THE LAW, consisting of

I. The applicant's complaints; the parties' arguments; any objections by the Government to the admissibility of the case; the Court's conclusion on the admissibility; establishment of facts and the Court's conclusion on the merits; and

II. **APPLICATION OF ARTICLE 41 OF THE CONVENTION:** The applicant's claims for pecuniary and non-pecuniary damage and for costs and expenses; the Government's response to the applicant's claims and the Court's conclusion on just satisfaction;

OPERATIVE PART: A recapitulation of the conclusions reached and any violations found; and, finally,

SEPARATE OPINIONS⁵²⁷

526 See Section 1.7.3 above.

527 See also Rules 74-75 of the Rules of Court.

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With the exception of “establishment of facts”, these components have already been dealt with in the preceding sections of this *handbook*.⁵²⁸ The Court’s judgments will be given in one of the official languages of the Court, i.e. English and French. In some cases, the judgment may be translated into the other official language.⁵²⁹ In exceptional cases, the judgment may be pronounced, i.e. read aloud, at a public hearing. The judgment will be transmitted to the Committee of Ministers for its execution. Certified copies of the judgment will be transmitted to the parties, the Secretary General of the Council of Europe, to any third party, and to any other person directly concerned.⁵³⁰

Rule 79 of the Rules of Court provides that parties may request the interpretation of a judgment within one year of the delivery of that judgment. Furthermore, Rule 80 of the Rules of Court provides for situations in which a new fact is discovered; if the fact by its nature might have a decisive influence on the Court’s deliberations, if it was unknown to the Court at the time of delivery of its judgment, and if it could not reasonably have been known to the party, that party may ask the Court to revise the judgment. Requests of this nature must be made within a period of six months after that party learned of the fact. They are, however, quite rare.

Finally, the Court may, of its own motion or at the request of a party made within one month of the delivery of a decision or a judgment, rectify clerical errors, errors in calculation, or obvious mistakes.⁵³¹

9.2 Referral to the Grand Chamber

Pursuant to Article 43 of the Convention, any party to the case may, in exceptional cases and within a period of three months from the date of the judgment of the Chamber, request that the case be referred to the Grand Chamber. It must be pointed out that the judgments adopted by the Grand Chamber are final and cannot be referred back to the Grand Chamber.

A request for referral to the Grand Chamber will be examined by a panel of five judges of the Grand Chamber, who will only accept the request in the following circumstances:

528 The issue of establishment of facts will be dealt with in Section 11 below.

529 Rule 76 of the Rules of Court.

530 Rule 77 § 3 of the Rules of Court.

531 Rule 81 of the Rules of Court.

“if the case raises a serious issue affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance”.⁵³²

The panel of the Grand Chamber will be composed of the President of the Court, two Presidents of Sections designated by rotation (to be replaced by the Vice-Presidents of their Section if they are prevented from sitting), two judges, and two substitute judges. The substitute judges are designated by rotation from among the judges elected by the remaining Sections to sit on the panel for a period of six months (Rule 24 § 5 (a) of the Rules of Court). The panel shall include neither any judge who took part in the consideration of the admissibility or merits of the case in question nor the judge elected in respect of, or who is a national of, a Contracting Party concerned by a referral request (Rule 24 § 5 (b-c)). Any member of the panel unable to sit for these reasons shall be replaced by one of the substitute judges (Rule 24 § 5 (d)).

Decisions of the Panel are final. Since the Panel does not provide reasons for referral decisions, it is difficult to determine exactly what considerations are decisive in any particular case. In any event, it appears from Article 43 that the referral procedure should not be regarded as an appeal on points of fact. It is not surprising, therefore, that the nature and the number of the cases referred to the Grand Chamber illustrate that the Panel will only accept requests for referral in exceptional cases. Indeed, in 2005 the Panel examined a total of 183 requests for referrals and accepted only 20.⁵³³

If the request is accepted by the Panel, the case referred to the Grand Chamber will embrace in principle all aspects of the application previously examined by the Chamber in its judgment. The scope of its jurisdiction is limited only by the Chamber’s decision on admissibility. This means that the Grand Chamber is precluded from examining complaints which have been declared inadmissible by the Chamber. However, as regards the complaints declared admissible by the Chamber, the Grand Chamber may also examine, where appropriate, issues relating to their admissibility in the same manner as this is possible in normal Chamber proceedings: for example by virtue of Article 35 § 4 *in fine* of the Convention (which empowers the Court to “reject any application which it considers inadmissible ... at any stage of the proceedings”), or where such issues have been joined to the merits or where they are otherwise relevant at the merits stage.⁵³⁴ The Grand Chamber will generally hold a hearing in Strasbourg before adopting its judgment.

532 Article 43 § 2 of the Convention.

533 Fifty-six of the 121 requests were made by Governments and five by both parties. See for further information the Annual Activity Report 2005 of the Grand Chamber at <http://www.echr.coe.int/NR/rdonlyres/AF356FA8-1861-4A6B-95E9-28ED53787710/0/2005GrandChamberactivityreport.pdf>.

534 *K. and T. v. Finland* [GC], no. 25702/94, 12 July 2001, §§ 140-141.

9.3 Execution of Judgments

It was mentioned earlier that the Committee of Ministers, which consists of the Ministers of Foreign Affairs of the Member States of the Council of Europe, is the decision-making body of the Council of Europe. Amongst its functions is the supervision of the execution of judgments of the European Court of Human Rights. Under Article 44, a judgment becomes final at the time of its delivery by the Grand Chamber. A judgment delivered by a Chamber, on the other hand, becomes final if no request for referral to the Grand Chamber is made within three months of delivery or, when such a request has been made, when it is rejected by the Panel of the Grand Chamber.

Under Article 46 § 1, Contracting Parties undertake to abide by the final judgment of the Court in any case in which they are parties. The final judgment will be transmitted to the Committee of Ministers for supervision of its execution. The respondent Government will be expected to pay the applicant any sums awarded for just satisfaction in the judgment within three months of the date the judgment becomes final according to Article 44 § 2 of the Convention.

Judgments referred to the Committee of Ministers are placed on the agenda of Committee meetings without requiring any action on the part of the applicant. However, it is up to the applicant to ensure that the respondent Government is in possession of the necessary bank account details to allow for the payment of just satisfaction awarded by the Court.⁵³⁵ An applicant will facilitate the Committee's work by informing it of any specific difficulties encountered, e.g. just satisfaction paid after the due date, interest for overdue payments not paid, refusal to reopen proceedings, etc.

“The Committee of Ministers is a political organ and as such it can bring its weight to bear on the State concerned in order to persuade it to execute the Court's judgment, including through the use of serious political sanctions provided for in the Statute of the Council of Europe”.⁵³⁶ It will ensure that respondent Contracting Parties pay applicants any awards made by the Court and take any individual measures indicated in the Court's judgment. It will

535 As pointed out in Section 7 above, applicants should include their bank account details in their claims for just satisfaction when sending those claims to the Court.

536 The ultimate sanction is the expulsion of a Member State from the Council of Europe if that Member State is deemed to have seriously violated Article 3 of the Statute of the Council of Europe, which provides as follows: “Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I”. See also Article 8 of the same Statute.

also oversee the implementation of more general measures by Contracting Parties so that similar violations are prevented in the future.⁵³⁷ For example, this may occur where the violation is due to a clear incompatibility between domestic legislation and the Convention, or if it is the result of a structural problem of judicial practice at national level. After establishing that the Contracting Party concerned has taken all the necessary measures to abide by the judgment, the Committee of Ministers adopts a resolution concluding that its functions under Article 46 § 2 of the Convention have been completed.⁵³⁸ Resolutions adopted by the Committee of Ministers may be searched through the above mentioned HUDOC search engine of the Court.⁵³⁹

Protocol No. 14 will enhance the powers of the Committee of Ministers in the area of execution of judgments by adding the following three new sub-paragraphs to Article 46 of the Convention, the second of which is probably the most far-reaching:⁵⁴⁰

“If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.

If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.

If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case”.

537 In this connection, it must be noted that according to Article 9 § 2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements which were adopted on 10 May 2006, “The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention”.

538 See the Committee of Ministers’ webpage devoted to “Execution of Judgments of the European Court of Human Rights” for further information: http://www.coe.int/T/E/Human_Rights/execution/.

539 Which may be accessed at <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>

540 See Article 16 of Protocol No. 14. See also the paragraphs 16 and 95-100 of the Explanatory Report to that Protocol in Appendix No.18.

PART IV

THE ABSOLUTE NATURE OF THE PROHIBITION AND THE INHERENT OBLIGATIONS OF ARTICLE 3

